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Conciliatory Authority of the Council of the League of Nations

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I

Under Chapter Six of the Charter of the United Nations, the Security Council is authorized to promote the peaceful settlement of major international disputes. In practice, the potentials of this authority have not been fully realized. While this is the result of varied causes, it is partially due to the attitude of the Great Powers, permanent members of the Council.[1] They prefer to utilize traditional modes of diplomacy to promote settlement,[2] especially if one of the parties to the underlying conflict is a "client" state.[3]

The Charter has been amended to increase the number of nonpermanent members so that the Council now reflects a preponderance of the regions and people of the world.[4] Smaller nations represented

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1. U.N. CHARTER art. 23, para. 1 provides that the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. Since 1971, the People's Republic of China has been recognized as the only lawful representative of China to the United Nations.

2. The co-sponsorship of the Middle East peace talks at Geneva by the United States and the Union of Soviet Socialist Republics is illustrative. *See, e.g.*, 2 Report of the Security Council, 29 U.N. GAOR Supp. 2, at 17, U.N. Doc. A/9602 (1974). On the general theme of pacific diplomacy by the Great Powers see W. LEVI, INTERNATIONAL POLITICS ch. 1 (1974) [hereinafter cited as LEVI]; H. MORGENTHAU, POLITICS AMONG NATIONS chs. 31-32 (1948) [hereinafter cited as MORGENTHAU].

3. The term "client" state refers to the factual dependence of small states upon the economic and military strength of larger states. *See generally* LEVI, *supra* note 2.

4. The amendments to U.N. CHARTER art. 23, para. 1 increase the number of nonpermanent members from six to ten. Total membership is increased from 11 to 15. The number of votes required for passage of procedural and non-procedural matters under article 27 of the Charter is changed from seven to nine. *See* Schwelb, *Amendments to Articles 23, 27 and 61 of the Charter of the United Nations*, 59 AM. J. INT'L L. 834 (1965). These amendments became effective August 31, 1965. The "equitable geographical distribution" clause of U.N. CHARTER art. 23, para. 1 was interpreted by the General Assembly as requiring an allotment of five nonpermanent seats to African and Asian states. For criticism of the attitudes of Afro-Asian nonpermanent members in the enlarged Council see R. HISCOCKS, THE SECURITY COUNCIL 97-103 (1973).

on the Council resent the disposition of the Great Powers to restrict the Council's involvement in dispute settlement. They believe that the purposes which the Council is designed to promote are being subverted by the diplomatic practices of the Powers.[5] The belief seems justified; failure to make full use of the Council's corporate responsibility runs counter to the democratization of the Council's structures and excludes the wisdom of the less powerful from the processes of peaceful settlement of disputes.

The authority of the Security Council in the field of peaceful settlement is difficult to delineate. In the Dumbarton Oaks Proposals[6] dealing with pacific settlement, a direct transition from the process of conciliation to enforcement was envisioned. Chapter VIII-B of the Proposals provided that if the Council deems the failure to settle a dispute to be a threat to the maintenance of international

5. *See generally* A. LALL, THE SECURITY COUNCIL IN A UNIVERSAL UNITED NATIONS (1971). Compare the critique of Secretary General Waldheim:

> [T]he idea of maintaining peace and security in the world through a concert of great Powers, although these Powers obviously have special responsibilities in matters of peace and security would seem to belong to the nineteenth rather than to the twentieth century, where the process of technological advance and democratization is producing a new form of world society. The world order that we are striving to build in the United Nations must meet the requirements of such a society, and any other system, however effective in the past, obviously cannot be acceptable, in the long run, to the peoples of the world. The interests, the wisdom and the importance of the vast majority of medium and smaller Powers cannot, at this point in history, be ignored in any durable system of world order.
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> The United Nations provides, or should provide, the means by which all nations, great and small, participate on a basis of sovereign equality in the political process of establishing and maintaining international peace and security, in facing common problems through cooperation, and in planning and organizing for a better future. The improvement of great power relations through bilateral diplomacy is certainly of fundamental importance in this process, but past experience indicates that it needs to be complemented and balanced by the multilateral diplomacy of the global Organization as a safeguard against misunderstandings, as a safety valve in critical times and as an instrument for the peaceful settlement of international disputes.

Introduction to the Report of the Secretary General on the Work of the Organization, 27 U.N. GAOR 1A, at 2, U.N. Doc. A/8701/Add. 1 (1972). For a formal expression of detente see Basic Principles of Relations Between the United States of America and the Union of Soviet Socialist Republics, done at Moscow on May 29, 1972, *reprinted in* 11 INT'L LEGAL MATERIALS 756 (1972). The Secretary General's hope for unanimity among the Council powers has not been realized, especially because of Sino-Soviet antagonisms.

6. At the Moscow Conference of October 19-30, 1943, representatives of China, the Soviet Union, the United Kingdom and the United States agreed on the necessity of establishing a general international organization at the earliest practicable date. In the late summer, representatives of these nations met at Dumbarton Oaks for exploratory conversation. The results of agreements reached were embodied in the Dumbarton Oaks Proposals.

peace and security, "it should take any measures necessary" to preserve "peace and security in accordance with the principles and purposes of the organization."[7] The distinction between "pacific settlement" and maintenance of peace first emerged at the San Francisco Conference.[8] It was motivated by a desire on the part of the drafters to prevent the Council from being empowered to impose settlements.[9] The distinction was reflected in the separate allocations of Council authority in Chapters Six and Seven of the Charter of the United Nations. Chapter Six empowers the Security Council to promote the peaceful settlement of serious disputes.[10] Chapter Seven authorizes the Council to take action with respect to threats to peace, breaches of the peace, and acts of aggression.[11] The regime of Chapter Six, which obliges parties to submit to the Council disputes that they have been unable to settle by peaceful means,[12] was not essentially linked with the power to maintain peace and security conferred by Chapter Seven.

Little attention has been directed towards comprehending the full responsibility of the Council under Chapter Six. Yet without such understanding, it is difficult to determine what legitimacy can be attached to the diplomacy of the Great Powers, particularly where a controversy is already under the jurisdiction of the Council. Since the corporate conciliatory authority of the Security Council reflects institutional developments traceable to the League of Nations period, it may be useful to examine the powers which the Council of the League exercised in the field of pacific settlement. This prior experience is particularly valuable; it contains clashes between institutional authority and power diplomacy which have great relevance to the difficulties being experienced today.

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7. Dumbarton Oaks Proposals for the Establishment of a General International Organization, ch. VIII-B, *reprinted in* R. RUSSELL, A HISTORY OF THE UNITED NATIONS CHARTER 1024 (1958).

8. At the Yalta Conference of February 3-11, 1945, it was agreed that a conference of the United Nations should be convened at San Fransisco to prepare the Charter of the organization along the lines of the Dumbarton Oaks Proposals. The United Nations Conference on International Organizations met at San Francisco on April 25, 1945. For a general summarization of the San Francisco conference see R. RUSSELL, A HISTORY OF THE UNITED NATIONS CHARTER pt. 5 (1958).

9. *Id.* at 662-64.

10. U.N. CHARTER arts. 33-38.

11. U.N. CHARTER arts. 39-51.

12. U.N. CHARTER art. 37, para. 1.

II

To put this matter in proper context, it is necessary to first refer to the regime of peaceful settlement established by the Great Powers of the nineteenth century under the system known as the Concert of Europe. The failure of that system led to institutionalization of peacemaking within the League of Nations. Cooperative supervision over matters of common interest by the Great Powers was derived from the Treaty of Chaumont,[13] in which victorious powers in the Napoleonic Wars reserved to themselves the authority to concert together to decide upon the best way to maintain the general stability in Europe. In exercising this power, the Concert made territorial determinations, established and guaranteed the status of states, resolved controversies, and proclaimed general rules of international law. It imposed substantive terms of settlement on weaker nations whose quarrels threatened the general order.

Justifications for the Concert System were debated in the international literature of the latter half of the nineteenth century.[14] The Great Powers had established themselves as directors of international society, but it was a factual dominance sustained by economic and military strength, not rightful authority. For Chrétien, a French jurist, the equality of states was the paramount norm;

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13. The treaty can be found in 1 BRITISH AND FOREIGN STATE PAPERS 119, 125 (1841). In 1818, France was formally brought into the Concert by the Treaty of Aix-la-Chapelle, November 15, 1818, *reprinted in* 6 BRITISH AND FOREIGN STATE PAPERS 14 (1835) (French text). For a discussion of these agreements see E. DICKINSON, THE EQUALITY OF STATES IN INTERNATIONAL LAW 292 (1920) [hereinafter cited as DICKINSON]; T.J. LAWRENCE, *Essay 5*, in ESSAYS ON SOME DISPUTED QUESTIONS IN MODERN INTERNATIONAL LAW (2d ed. 1885).

On the general history of the balance of power in international politics see MORGENTHAU, *supra* note 2, at ch. 4; A. NUSSBAUM, A CONCISE HISTORY OF THE LAW OF NATIONS ch. 5 (1958) [hereinafter cited as NUSSBAUM]; Q. WRIGHT, A STUDY OF WAR ch. VI (1942). For a study concentrating on Westphalia through the Concert period see C. DUPUIS, LE PRINCIPE D'EQUILIBRE ET LE CONCERT EUROPEEN (1909) [hereinafter cited as DUPUIS].

Balance or equilibrium assures stability within a social system composed of autonomous states. If the balance is disturbed, either by outside forces or changes within, an effort is made to either reestablish the old balance or create a new one. The objective is not to achieve stability for its own sake, but to create the conditions which preserve the vitality and diversity of the elements within the system. A need to achieve balance of power in international affairs arises whenever a plurality of states coexist in a given geographical area. *See* WRIGHT, *supra* at 123-27. The ideal of the Concert was to secure harmony by reducing the tendency of powers to form opposing blocks and by promoting the conciliatory settlement of differences.

14. *See generally* DICKINSON, *supra* note 13; T.J. LAWRENCE, PRINCIPLES OF INTERNATIONAL LAW pt. II, ch. 4, §§ 112-14 (6th ed. 1970) [hereinafter cited as LAWRENCE]; NUSSBAUM, *supra* note 13, at 118-96; J. WESTLAKE, PRINCIPLES OF INTERNATIONAL LAW ch. 7 (1894).

neither a single power nor a union of powers had any authority to control the freedom of smaller states.[15] The majority of jurists, however, viewed the hegemony of Great Powers as lawful since it was generally useful. The understandings which the Powers reached, and the pressures which they exercised, were an expression of the general interest in peace.[16]

At the beginning of the twentieth century, what had begun as a European system had prospects of becoming a World Concert. The potential for collective supervision over inter-state disputes expanded as the United States, Japan, Italy, and Germany became Great Powers. Great Power peacekeeping was accepted because the general society of nations perceived a need for such pacific authority. But it was a qualified or provisional legitimacy: "If they cease to be useful," one writer warned, "their preeminence will depart from them."[17] The failure of the Concert system to prevent the outbreak of the First World War struck a serious blow to this diplomatic method of preserving the general peace.

At the conclusion of the First World War, it was uncertain whether the responsibility of a Concert of Great Powers would be sanctioned by the law of nations. At the peace conferences of 1919, the victorious allies were given, among other advantages, permanent seats in the Council of the League of Nations. Some jurists

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15. Chrétien observed:

> Les grandes Puissances . . . tendent . . . à transformer en autorité de droit l'autorité de fait qui ne peut manquer d'être la conséquence de la supériorité de leurs forces militaires et de leurs richesses. C'est précisément en ce faisant qu'elles violent manifestment le principe de l'égalité juridique des États.

A. CHRÉTIEN, PRINCIPES DE DROIT INTERNATIONAL PUBLIC 175 (1893).

Nys, too, suggested that the concert of the Great Powers was a political product: "[L]es grandes puissances ne sont ni le tribunal ni le pouvior exécutif d'une organisation internationale; leur 'concert,' leur 'accord' est un produit de la politique." 2 E. NYS, LE DROIT INTERNATIONAL 199 (1905). For an historical contrast, compare E. NYS, ÉTUDES DE DROIT INTERNATIONAL ET DE DROIT POLITIQUE (1901), with DUPUIS, *supra* note 13, at ch. 11. For more favorable French assessment of the basis for the authority of the Great Powers see PILLET, RECHÈRCHES SUR LES DROITS FONDAMENTAUX DES ÉTATS, 5 REVUE GÉNÉRALE DE DROIT INTERNATIONAL PUBLIC 66, 70-71 (1898).

16. "[T]he hopelessness of resistance in those circumstances has led to an express or tacit, but peaceable, acceptance of the decrees by the states concerned." 1 J. WESTLAKE, INTERNATIONAL LAW 321 (1910). "[W]hat is political is legal also, if it is generally accepted and acted upon." LAWRENCE, *supra* note 14, pt. II, ch. 4, § 114, at 276. *See* T.E. HOLLAND, STUDIES IN INTERNATIONAL LAW 268 (1898).

17. LAWRENCE, *supra* note 14, pt. II, ch. 4, § 114, at 279. For a study of the general decline of the Concert and the crisis that developed in 1913-14 see R.B. MOWAT, THE CONCERT OF EUROPE chs. 24-26 (1930).

viewed this as a vindication of the Concert principle. The important position and influence of the Great Powers now had a legal basis: their concurrent pacific action would be a matter of right and not just a product of superior strength.[18] But the Powers' special responsibility for keeping the peace was only acknowledged by permanent representation on an organ of the League. It was not an endorsement of any general political predominance. The drafting of the League Covenant demonstrated that the victorious powers were expected to share a collective responsibility with other member nations on the Council to maintain the general peace. This policy determination was not made, however, until the rejection of several organizational plans.

A British draft for a League of Nations provided for conferences to review the general condition of international relations, giving specific attention to difficulties which might threaten the peace. The victorious states, together with others recognized by them as Great Powers, would meet annually; quadrennial meetings would be held by all states included in the League.[19] President Wilson proposed an Executive Council consisting of representatives of the Great Powers and representatives drawn in annual rotation from two panels: one made up of representatives of states ranking next after the Great Powers, the other representing "minor" states. The number drawn from these panels would be one less than the number of Great Powers. Three or more negative votes in the Council would operate as a veto.

A later combined British-American draft provided that representatives of states which were members of the League and directly affected by matters within the sphere of action of the League should meet as an executive council "from time to time as occasion may require." This idea was reflected in the proposed Article III of the League Plan which stated that the United States, Great Britain, France, Italy, and Japan—the major powers—would be deemed to be directly affected by all matters of the League. Invitations would

18. The predominant position of the Great Powers was one of the principles upon which the political institutions of the League were founded, a primacy admitted as of right. Barker, *The Doctrine of Legal Equality of States*, 4 BRIT. Y.B. INT'L L. 1, 16 (1923). The political hegemony of the Great Powers was given a legal basis in the League Covenant. I L. OPPENHEIM, INTERNATIONAL LAW 276 (8th ed. H. Lauterpacht 1955).

19. This was the Cecil Plan of January 14, 1919, discussed in 2 D. MILLER, THE DRAFTING OF THE COVENANT 61 (1928).

be sent to any power whose interests were directly affected in any particular situation, and no decision taken at any meeting would be binding on a state that was not invited to be represented at the meeting.[20] This proposal was unacceptable to smaller states. They would be unable to participate in the settlement of disputes since, by definition, they would be parties to the disputes under consideration during their attendance on the Council. The practical result would be that all decisions would be made by the Great Powers. The Executive Council would not be an organ of a League of Nations; it would be an organ of five nations to which every one must submit.[21]

Attention was then directed towards a draft prepared by M. Orlando of Italy which envisioned a council consisting of the five major powers and two representatives of other states that were members of the League. It was finally agreed that a majority position could be assured to the Great Powers by a five to four ratio. The theory which was finally embodied in Article Four of the Covenant was that the Council should consist of five permanent members possessing general interests and four nonpermanent members with "limited interests" who would be representatives of the assembly and elected by it. If other Great Powers were admitted, it was understood that some provison should be made for representation of the smaller nations. In fact, the failure of the United States to ratify the Covenant meant that the Council began its work with an equal number of large and small powers. In 1922, the nonpermanent seats were raised by two; thereafter, the smaller powers remained a majority.[22]

The Council of the League was to function, in principle, on the

20. Myers, *Representation in League of Nations Council*, 20 AM. J. INT'L L. 689 (1926).

21. *Id.* at 695. It should be noted that jurists who had found the Concert system unacceptable did not propose equality as a remedy. The Scottish jurist, James Lorimer, suggested, for example, that for purposes of international organization, the size, government, material strength, and level of civilization of each state should be taken into account and its political position determined by the relative weight of such criteria. J. LORIMER, INSTITUTES OF THE LAW OF NATIONS 182 (1883). These principles were influential at the time of the First World War. *See* Brown, *The Theory of the Independence and Equality of States*, 9 AM. J. INT'L L. 305 (1915). Inequalities in the general structure of the League are examined in DICKINSON, *supra* note 13, at 337.

22. Nonpermanent membership was raised to six in 1922, nine in 1926, ten in 1933 and 11 in 1936. Germany became a permanent member in 1926; the Union of Soviet Socialist Republics, in 1934. Following withdrawal from the League by Germany and Japan, the Council was composed of four permanent and 11 nonpermanent members. *See generally* ESSENTIAL FACTS ABOUT THE LEAGUE OF NATIONS (19th rev. ed. 1939). The Soviet Union was excluded from the League in December, 1939, following her attack on Finland.

basis of unanimity. Rather than an institutional expression of the dominance of Great Powers, the Council was to be an organ of collective conciliation. Its goal was to prevent war by promoting the peaceful settlement of international disputes. This theory of pacific settlement constituted a fundamental change in international relations; under the Covenant, member states assumed an obligation to submit serious, nonjusticiable disputes to the mediation of the Council of the League.[23] The modalities of peaceful settlement were expected to be significantly different from what they had been during the period of the Concert of Europe.

> The Council is something more than a diplomatic conference; it is not an assemblage of Powers, bound by no law, each one striving to obtain some particular or selfish advantage: when Foreign Ministers sit at the Council table they do not merely represent their own countries, they assume special responsibilities, as members of the executive council of the League, and are each, great and small, equally subject to the laws and principles of the Covenant . . . .[24]

During the first decade of its existence, the Council took preventive measures under Article 11(1) of the Covenant where disputes involved war or the threat of war[25] and assumed jurisdiction over disputes "likely to lead to a rupture" within the meaning of Article 15.[26] Historians of the period refer to the pervasive influence of power politics upon the work of the League, noting the testimony of delegates from smaller states that, despite the juridical composi-

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23. Under LEAGUE OF NATIONS COVENANT art. 12, members states undertook to submit disputes "likely to lead to a rupture" to arbitration, judicial settlement, or to inquiry by the League Council. *See* Covenant of the League of Nations with Amendments in Force, June 26, 1945, *reprinted in* L. GOODRICH & E. HAMBRO, CHARTER OF THE UNITED NATIONS 555 (2d rev. ed. 1949).

24. T.P. CONWELL-EVANS, THE LEAGUE COUNCIL IN ACTION 253 (1929) [hereinafter cited as CONWELL-EVANS].

25. LEAGUE OF NATIONS COVENANT art. 11, para. 1 provided:

> Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.

26. LEAGUE OF NATIONS COVENANT art. 15, para. 1 declared:

> If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration or judicial settlement . . . the Members of the League agree that they will submit the matter to the Council.

tion of the Council, no serious disputes were actually resolved without an agreement among the Great Powers.[27] If such remarks are uncritically accepted, they can obscure the evolution of the institutional authority of the Council. The support of the Great Powers was essential to the Council's effectiveness, but the Council was not their agent. During this period, the Council established its independent authority. The development of this authority distinguished the League's institutional machinery for the pacific settlement of disputes from the methods of traditional diplomacy.

III

The gradual evolution of the Council's authority vis-à-vis the diplomacy of the Great Powers can be first seen in its relationship to the Supreme Council of the Allied Powers and the Conference of Ambassadors, a subsidiary organ established by these powers to supervise the execution of the peace treaties. Some cases submitted to the Council of the League involved the concurrent jurisdiction of the Supreme Council and were ultimately resolved by the Supreme Council. In the Polish-Lithuanian dispute over Vilna, an armistice arrangement worked out by the Council was ineffective and the dispute was finally resolved by the Allied Powers.[28] But where agreement could not be reached on the frontier between Germany and Poland in the region of Upper Silesia, the Supreme Council of the Allied Powers submitted the matter to the League Council, asking it to make recommendations and agreed to "solemnly undertak[e] to accept the solution recommended by the Council of the League."[29] Submissions were also received from the Conference of Ambassadors.[30]

A serious conflict of jurisdiction arose between the Council of the League and the Conference of Ambassadors in the famous Corfu

27. E. CARR, THE TWENTY YEARS' CRISIS 1919-1939, at 104 (2d ed. 1946).

28. For a discussion of the Vilna dispute see CONWELL-EVANS, *supra* note 24, at 89-100; P.CORBETT, LAW IN DIPLOMACY 191-95 (1967) [hereinafter cited as CORBETT].

29. CONWELL-EVANS, *supra* note 24, at 203 n.1. *Compare id.* at 201-10, *with* CORBETT, *supra* note 28, at 200-02. The former is critical, placing emphasis on the close realtionship between the Committee of the Council and the interested powers.

30. The Conference of Ambassadors submitted four disputes to the Council of the League. Great Britain submitted a dispute with France under LEAGUE OF NATIONS COVENANT art. 15, para. 1, concerning the Tunis Nationality decrees. Under article three of the Treaty of Lausanne, the question of Mosul sovereignty was submitted to the League by Great Britain and Turkey. For a list of disputes submitted during the first decade of the League's existence see CONWELL-EVANS, *supra* note 24, at app. II.

incident of 1923. The manner in which it was resolved revealed important differences between authoritative competence and *de facto* power. The conflict began when an Italian member of a boundary commission appointed by the Conference of Ambassadors to delimit the border between Greece and Albania was murdered on Greek territory. The Conference demanded that the guilty parties be punished. Greece invited the Conference to send in its investigators and agreed to accept their conclusions. The Italian dictator Mussolini, however, demanded that Greece immediately accept responsiblity. Greece refused, offering instead to submit the matter to the League Council. The dictator replied by bombarding and occupying Corfu. The Greek government then appealed to the Council under Articles 12 and 15 of the Covenant. Mussolini rejected the Council's authority and threatened to withdraw from the League. Under pressure, he accepted the jurisdiction of the Conference of Ambassadors.

At the time, the League Council consisted of representatives of the British Empire, France, Italy, Japan, Spain, Belgium, China, Sweden, Brazil, and Uruguay. Except for the Italian and French representatives, all accepted the Council's competence. The Council's position was difficult. It could not deny the right of the Conference to establish the responsibility for the murder of its agents, yet it could not acquiesce in the repudiation of its own authority. At the suggestion of the British representative, a statement of appropriate lines of settlement was approved and conveyed to the Conference of Ambassadors. In substance, these terms were proposed by the Conference to Greece and accepted by that government. Mussolini refused the proposals, which would have had the issue of Greek responsibility determined by inquiry and the issue of indemnity decided by the Permanent Court of International Justice. Concerned that the annexation of Corfu would disturb the balance of power, the Conference acceded to the show of force, ordering Greece to pay a substantial indemnity.[31]

The Corfu incident was a defeat for the Council, but it served to distinguish the Council's authority as independent of international politics. It did not submit to Italian demands that it was without jurisdiction, a position later vindicated by the report of a special

31. *See* J. BARROS, THE CORFU INCIDENT OF 1923 (1965); CONWELL-EVANS, *supra* note 24, at 73-81; CORBETT, *supra* note 28, at 195-200.

commission of jurists.[32] While the Conference of Ambassadors had a legitimate competence, its decision was clearly unjust. It carried none of the moral force which had sustained actions of the Great Powers during the Concert period of the nineteenth century. And, it signaled a disposition to settle international differences on the basis of political considerations, a disposition to act outside the institutions of the League. This tendency would reach its height in the Locarno period.

The execution of the Locarno treaties was preceded by the failure of the Geneva Protocol for the Pacific Settlement of International Disputes of 1924. The Geneva Protocol, in attempting to close "the gaps" of the Covenant of the League of Nations,[33] would have increased the authority of the Council under Article 15. It was proposed that if the Council could not effect a settlement of a dispute, it should seek to persuade the parties to submit to either judicial settlement or arbitration. Failing that, arbitration could be instigated at the request of one party. If none of these circumstances occurred, the Protocol envisioned a reconsideration of the dispute by the Council. Signatory states would be committed to comply with recommendations contained in a report agreed to by all Council members other than the representatives of any of the parties to the dispute. A final clause of compulsory arbitration covered the contingency of a nonunanimous report.[34]

The Locarno treaties, by contrast, reduced the peacemaking authority of the Council. The treaties substituted an elaborate system of concilation for the Council's direct pacific authority. The primary treaty, that of mutual guarantee between the five European powers, was designed to settle Germany's western boundaries. While the Council had immediate authority in cases of armed aggression,

32. *See* CORBETT, *supra* note 28, at 198-99.

33. A "gap" existed under the League Covenant because the modes of peaceful settlement provided by the Covenant were not conclusive. Under LEAGUE OF NATIONS COVENANT art. 12, para. 1, the members were obliged to submit disputes between them "likely to lead to a rupture" to arbitration, judicial settlement, or inquiry, and agreed further not to resort to war until three months after arbitral award, judicial decision, or report by the Council. *See also* LEAGUE OF NATIONS COVENANT art. 13, para. 4; *id.* art. 15, paras. 6-7.

34. Protocol for the Pacific Settlement of International Disputes, approved by the Assembly of the League of Nations, October 2, 1924, *reprinted in* 19 AM. J. INT'L L. 22 (Supp. 1925). Under article two of the Protocol the states would agree not to resort to war except in resisting acts of aggression or when acting in agreement with the Council or the Assembly of the League. *See generally* Shotwell, *Security*, in PIONEERS IN WORLD ORDER 26 (H. Davis ed. 1944).

other quesions which could not be settled by diplomacy would be submitted either to judicial decision or to a conciliation commission. The Council's jurisdiction under Article 15 would arise only if the proposals of the commission were not accepted by the two parties.[35]

In the so-called arbitration conventions of Locarno, the Council's authority was equally remote. A permanent Conciliation Commission was to be established which could consider legal disputes before their submission to judicial or arbitral decision. All other disputes between the parties which could not be settled by diplomacy were to be submitted to the Conciliation Commission. If no agreement was reached within a month following the Commissioner's report, the question could, at the request of either party, be brought before the Council.

There were important political justifications for the Locarno agreement.[36] It allayed France's fears for its security, and it provided for Germany's entry into the League and gave her a permanent seat on the Council. But there were also divisive consequences. The Locarno powers used Council sessions to hold meetings among themselves, a practice resented by other representatives to the Council who feared that the authority which belonged to the whole body might be usurped. The expressed fears were not without foundation:

> If the meetings of the Locarno powers (colloquially known in Geneva as Locarno tea parties) had been limited, as was claimed, to the consideration of questions which concerned the participants alone, they would have been open to no objection. But in fact they were not so limited. They were used to discuss matters of general interest to the whole League, such as that of the relations between the Western powers and Russia. They were used for preliminary negotiation on questions which were on the agenda of the Council. They were even used, on occasion, for preventing the submission to the League of affairs which might embarrass one or another member of the group.

35. Treaty of Mutual Guarantee Between Germany, Belgium, France, Great Britain and Italy, Annex A of the Locarno Conference, done at Locarno, Oct. 16, 1925, *reprinted in* 20 AM. J. INT'L L. 21 (Supp. 1926). The jurisdiction of the Council was immediately engaged under article four in the treaty in case of aggression.

36. *See* Comment, *The Legal Significance of the Locarno Agreements*, 20 AM. J. INT'L L. 108 (1926).

> . . . The result was naturally a loss of corporate sentiment in the Council, and a loss of cohesion as between the Secretariat and the delegations. Most serious of all, the Covenant itself seemed to be in danger of oblivion. The Locarno group was to some extent a reembodiment of the old Concert of Europe; it reached its conclusions, not by respecting the principles, nor by using the methods, of the League, but by finding diplomatic compromises between the wishes and interests of the Great Powers.[37]

The diplomacy of Locarno failed in its pacific objectives. The defiance of the Covenant by Italy and Japan could not be stemmed; attempts at compromise, such as the Hoare-Laval Plan to settle the Ethiopian conflict, only accelerated the decline of the League during the 1930's. Hitler's occupation of the Rhineland brought a Council judgment that the Locarno treaties had been violated, but by then there was no moral basis upon which to build common action under the League Covenant.[38]

IV

The revival of Great Power diplomacy not only contributed to the decline of the League, it also eclipsed the potential growth of the Council as a collective organ of pacific settlement. Under Article 15 of the Covenant, the Council was responsible to endeavor to effect settlement of disputes submitted to its authority. In exercising this competence, it had developed a wide range of procedures, including commissions of inquiry and submission of issues to the Permanent Court of Justice for Advisory Opinions, as well as the more direct methods of diplomacy and good offices used to promote negotiations between the parties. These institutional innovations constituted an important advance in the theory and practice of conciliation.

Under the Hague Conventions of 1899 and 1907,[39] provision was

37. F.P. WALTERS, A HISTORY OF THE LEAGUE OF NATIONS 341 (1960) [hereinafter cited as WALTERS]. *But see* G. SCOTT, THE RISE AND FALL OF THE LEAGUE OF NATIONS ch. 9 (1973) [hereinafter cited as SCOTT].

38. The decline of the League is documented in WALTERS, *supra* note 37, at pt. IV. *See also* SCOTT, *supra* note 37, at pt. 2.

39. Convention for the Pacific Settlement of International Disputes of 1899, arts. IX-XIV, *reprinted in* 2 W. MALLOY, TREATIES 2016, 2022 (1910). Convention for the Pacific Settlement of International Disputes of 1907, arts. IX-XXXVI, *reprinted in* 2 W. MALLOY, TREATIES 2220, 2230-34 (1910). The basic article in both conventions, article IX, stated that inquiry was

made for the International Commissions of Inquiry which would have been empowered to make impartial investigations of disputed facts. Under the Bryan Plan of 1913,[40] such commissions had authority to consider the factual aspects of all nonjusticiable issues between the contending parties. But such commissons would only be empowered to carry out their investigations and make their reports to the governments involved; these governments were then at liberty to disregard them. Moreover, conciliation commissions were rarely empowered to make recommendations concerning terms of settlement.[41]

The methods of conciliation developed by the Council displayed a marked improvement over earlier efforts. Under Article 15 of the League Covenant, members were obliged to submit to the Council disputes "likely to lead to a rupture" which were not submitted to arbitration or judicial settlement. The Council was obliged to endeavor to effect a settlement,[42] and no limit was placed upon the methods which the Council could use to fulfill its obligation. As a constitutional body in regular session, the Council had broad power to choose commissions best suited to the varied tasks of investigation for which it was responsible once its jurisdiction had been engaged. And, it would authorize the commissions to make recommendations or proposals based upon ascertained facts. Such recommendations, if adopted by the Council, could then be used by it as a basis for inducing the parties to reach a settlement.[43]

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deemed suitable for disputes "involving neither honour nor vital interests" and arising from a difference of opinion on points of fact.

40. The Bryan Plan refers to treaties of pacific settlement negotiated by Secretary of State William J. Bryan which provided for the use of commissions of inquiry to facilitate settlement of dispute. The treaty with Guatemala for the Advancement of Peace, Sept. 20, 1913, 38 Stat. 1840, T.S. No. 598 (*reprinted in* 3 W. MALLOY, TREATIES 2666 (1923)) is a prime example. *See* 2 C. HYDE, INTERNATIONAL LAW § 558 (1945).

41. Under the terms of the treaty concerning boundary waters between the United States and Canada of January 11, 1909, 36 Stat. 2448, T.S. No. 548, the International Joint Commission was empowered by article nine of the treaty to investigate and report on the facts and to accompany its report with "such conclusions and recommendations as it may deem appropriate." Hyde, *The Place of Commissions of Inquiry and Conciliation Treaties in the Peaceful Settlement of International Disputes*, 10 BRIT. Y.B. INT'L L. 96 (1929). *See also* 2 C. HYDE, INTERNATIONAL LAW §§ 557-58(B) (2d rev. ed. 1945).

42. LEAGUE OF NATIONS COVENANT art. 15, para. 3.

43. M.O. HUDSON, BY PACIFIC MEANS 28 (1935). When disputes were amenable to objective examination, the Council either established commissions of inquiry which would investigate the facts and formulate a proposed settlement, or, with the consent of the parties, requested an advisory opinion from the Permanent Court of International Justice on the substantial

Where the underlying controversy touched vital interests, the Council used its direct authority in a manner which represented an advance over traditional diplomatic methods. Acting as a body, or through mediating committees, the Council used its discretionary powers in an effort to persuade the parties to reach a new political accommodation. This was a form of diplomacy by conference.[44] Its success required a corporate sense of responsiblity for peace, substantial objectivity on the part of interested members, and the active participation of neutral states.

Following Locarno, these progressive developments in pacific settlement declined. The Kellogg-Briand Pact,[45] renouncing war as a means of settling disputes, did not strengthen the Council's authority and increased emphasis was placed upon the establishment of conciliation procedures outside the jurisdiction of the League.[46] As the authority of the Council diminished it lost the ability to maintain supervision over serious disputes. These conflicts were being continually absorbed into the processes of international politics.

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In the years immediately following the establishment of the United Nations in 1945, the Security Council, as a principle organ of the world body, exercised the conciliatory authority conferred

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matters in dispute. In "political" controversies, in which there was a need to formulate a new regime of rights and duties, the Council invoked its conciliatory authority, seeking, as a body or through committees, to directly induce the parties to negotiate a fresh agreement. The role of the rapporteur was important; he would maintain contact with the disputant parties and recommend different courses of action to the Council at various stages of the dispute. CONWELL-EVANS, *supra* note 24, at pt. 3, ch. 7; J. STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 168-75 (rev. ed. 1959).

44. For an illustration of Council diplomacy by conference see the summary of the Hungarian Optant dispute in CONWELL-EVANS, *supra* note 24, at 185-200. Diplomacy by conference refers to the corporate activities of the Council.

45. Kellogg-Briand Pact of Paris, Aug. 27, 1928, 46 Stat. 2343, T.S. No. 796, 94 L.N.T.S. 57.

46. Brierly was critical of the conciliation provisions in the Geneva General Act for the Pacific Settlement of Disputes, General Act of Arbitration of September 26, 1928, 93 L.N.T.S. 342, which he saw as detracting from the authority of the Council. The regularity of Council sessions, the fact that its members had responsibilities to the world at large, and the flexibility of its methods made it a superior instrument for the pacific settlement of disputes. By making Council authority remote or residual, the General Act contained the same weakness as the Locarno treaties. Brierly, *The General Act of Geneva*, 1928, 11 BRIT. Y.B. INT'L L. 119 (1930).

upon it by Chapter Six of the Charter. It utilized its power of investigation,[47] appointed mediators, encouraged parties to serious disputes to continue negotiations, and made appropriate recommendations.[48] The Council understood its authority as including the right to require from the parties an accounting of the progress being made towards a final settlement of their differences.[49] In doing so, it extended the processes of corporate responsibility for the promotion of the peaceful settlement of disputes which was begun by the Council of the League of Nations.

Yet the potentials for the development of corporate conciliation have not been fully developed by the present Council. The absence of a corporate disposition within the Council towards the settlement of serious disputes has led to a chronic dependence upon peacekeeping forces without a corresponding progress towards final resolution of the underlying conflicts. The Cyprus conflict provides a tragic illustration of the Security Council's failure to fully use its conciliatory authority. In 1971, after mediation efforts had failed, the Secretary General urged the Council to use its influence and become more directly involved in assisting the parties to overcome their basic differences. Referring to Greek Cypriot fear of partition and Turkish Cypriot fear of *enosis*[50] he urged the Council to take affirmative steps to conciliate the dispute:

> It seems to me that if the Security Council were able in some way to assist the parties in dispelling the difficulties created by these two ideas [*i.e.*, fear of partition and fear of *enosis*] and in doing so, to reaffirm its own determination to ensure that a just settlement was reached in Cyprus within the principles of the Charter and the spirit and letter of its resolutions on the subject a great improvement in the atmosphere of the talks . . . might result.

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47. *See* U.N. CHARTER art. 34.

48. *See* U.N. CHARTER art. 36, para. 1; *id.* art. 37, para. 2.

49. In the Soviet-Iranian dispute of 1946, the Council, noting the parties' willingness to settle the matter by a renewal of negotiations, requested them to inform the Council of any results achieved and reserved the right to request information on the progress of negotiations. 1 U.N. SCOR, 1st. ser., No. 1, at 70 (1946). See also the resolution on the Indonesia case in 2 U.N. SCOR, 1703 (1947). For a general review of the positive exercise of conciliatory authority by the Security Council see Murphy, *The Obligation of States to Settle Disputes by Peaceful Means*, 14 VA. J. INT'L L. 57 (1973).

50. "Enosis" refers to union with Greece.

> . . . [W]hen the United Nations has been involved in this problem for so many years and with considerable expenditure both of effort and resources . . . the Security Council should become more actively involved in assisting the parties in the search for a solution to the Cyprus problem.
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> On some of the basic issues it seems to me that the Council's advice, guidance and new initiatives, of course with the agreement of the parties, would be a reassuring and constructive element in their efforts to reach a settlement. It would be, of course, for the Council itself to consider how best it may play a role.[51]

The Council did not act and the consequences were catastrophic.

Any authentic revival of the Security Council's authority in the peacemaking field will require it to make a more vigorous use of its conciliatory authority and to distinguish its responsibility from the modalities of world politics. A greater awareness of the work of the Council of the League of Nations is indispensable to that objective. At the beginning of the League period, it was realized that the peaceful settlement of international disputes could only be realized if the Council became "something more than a diplomatic conference"[52] and if its members were committed to the pacific objectives of the world community. The Corfu incident demonstrated that an international peacemaking body must distinguish its authority from the exigencies of power diplomacy if it hopes to maintain its integrity.

The history of the League after Locarno demonstrates the futility of efforts to settle international disputes outside an institutional framework. It is a lesson which the present world community has not fully understood. International conferences convened outside the United Nations failed to peacefully settle the Indochina conflict;[53] it is still expected that the Middle East problem can be

51. Report by the Secretary General on the United Nations Operation in Cyprus, U.N. Doc. 5/10401, at 36 (1971).

52. *See* CONWELL-EVANS, *supra* note 24, at 253.

53. The 1954 Geneva Conference, the 1962 Conference on Laos and Cambodia, and the International Conference on Vietnam (Paris peace talks) of 1973, were all traditional diplomatic conferences. All failed to the extent that they sought to bring about peaceful change. The Act Concerning the Paris Agreement on Ending the War and Restoring Peace in Vietnam, done at Paris on March 2, 1973, was signed in the presence of the Secretary General of the United Nations. See the text of the Act *reprinted in* 12 INT'L LEGAL MATERIALS 392 (1973).

resolved within a conference context, with the Great Powers acting as supreme mediators.[54]

Those who forget the mistakes of the past are bound to repeat them.

54. The co-sponsorship of the Middle East peace talks at Geneva by the United States and the Soviet Union was characterized as joint good offices made available to the parties as a means of facilitating the negotiation process. Report of the Security Council, 29 U.N. GAOR Supp. 2, at 17, U.N. Doc. A/9602 (1974).